

Senate Bill 471

By: Senator Hudgens of the 47th

AS PASSED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for regulator financial examinations of domestic insurers every five years; to provide for the confidentiality of examination work papers; to provide for the immunity from liability for a contracted examiner to be the same as that of an employee of the state conducting the same state functions; to provide a short title; to provide for the submission of an annual statement of actuarial opinion by an appointed actuary by each property and casualty insurance company licensed to do business in this state; to provide for exceptions; to provide for the submission of supporting documentation; to provide for the confidentiality of certain documents, materials, and other information; to authorize disclosure under certain conditions; to provide for certain immunities; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by revising subsection (a) of Code Section 33-2-11, relating to examination of insurers and organizations, as follows:

"(a) Whenever the Commissioner shall deem it expedient, the Commissioner shall examine, either in person or by some examiner duly authorized by the Commissioner, the affairs, transactions, accounts, records, documents, and assets of each insurer authorized to do business in this state and any other facts relative to its business methods, management, and dealings with policyholders. At least once every five years, the Commissioner shall so examine each domestic insurer. Examination of an alien insurer shall be limited to its insurance transactions in the United States."

SECTION 2.

Said title is further amended by revising subsection (g) of Code Section 33-2-14, relating to preparation of written reports of examinations generally, as follows:

"(g) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, relating to the inspection of public records, all work papers, recorded information, documents, copies received from another state, and any other materials created, produced, or obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this chapter must be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person. Access may be granted to authorized representatives of the National Association of Insurance Commissioners. Such representatives must agree in writing prior to receiving the information to treat such information confidentially as required by this Code section, unless the prior written consent of the company to which it pertains has been obtained."

SECTION 3.

Said title is further amended by revising Code Section 33-2-15, relating to payment of expenses of examinations, as follows:

"33-2-15.

(a) At the direction of the Commissioner, the insurer or other person so examined shall pay all the actual travel and living expenses of the examination. When the examination is made by an examiner who is not a regular employee of the department, the person examined shall pay the proper charges for the services of the examiner and his or her assistants and the actual travel and living expenses incurred by such examiners and assistants in an amount approved by the Commissioner. A consolidated account for the examination shall be filed by the examiner with the Commissioner. No person shall pay and no examiner shall accept any additional emolument on account of any examination. When the examination is conducted in whole or in part by regular salaried employees of the department, payment for such services and proper expenses shall be made by the person examined to the Commissioner, and such payment shall be deposited in the state treasury; provided, however, that, when an agent, broker, solicitor, counselor, or adjuster is examined because of a complaint filed against such agent, broker, solicitor, counselor, or adjuster and when the Commissioner finds that the complaint was not justified, the expenses of the examination shall not be assessed against the agent, broker, solicitor, counselor, or adjuster but shall be borne by the department.

(b) An examiner or other person appointed or authorized by the Commissioner, while participating in an examination conducted under this chapter, shall enjoy the same immunities as those of a regular employee of the department under similar circumstances."

SECTION 4.

Said title is further amended by adding a new chapter to read as follows:

"CHAPTER 62

33-62-1.

This chapter shall be known and may be cited as the 'Property and Casualty Actuarial Opinion Law.'

33-62-2.

(a) Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled 'Statement of Actuarial Opinion.' This opinion shall be filed in accordance with rules and regulations promulgated by the Commissioner regarding property and casualty annual statement instructions.

(b)(1) Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with rules and regulations promulgated by the Commissioner regarding property and casualty annual statement instructions and shall be considered as a document supporting the actuarial opinion required in subsection (a) of this Code section.

(2) A company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(c)(1) An actuarial report and underlying work papers as required by rules and regulations promulgated by the Commissioner regarding property and casualty annual statement instructions shall be prepared to support each actuarial opinion.

(2) If the insurance company fails to provide a supporting actuarial report or work papers at the request of the Commissioner or the Commissioner determines that the supporting actuarial report or work papers provided by the insurance company are otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at

the expense of the insurance company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(d) The appointed actuary shall not be liable for damages to any person other than the insurance company and the Commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion except in cases of fraud or willful misconduct on the part of the appointed actuary.

33-62-3.

(a) The statement of actuarial opinion shall be provided with the annual statement in accordance with rules and regulations promulgated by the Commissioner regarding property and casualty annual statement instructions and shall be treated as a public document.

(b)(1) Documents, materials, or other information in the possession or control of the department that are considered an actuarial report, work papers, or actuarial opinion summary provided in support of the opinion and any other material provided by the insurance company to the Commissioner in connection with the actuarial report, work papers, or the actuarial opinion summary shall be confidential by law and privileged, shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) The provisions of this subsection shall not be construed to limit the Commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents. In addition, the provisions of this subsection shall not be construed to limit the Commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(c) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning such confidential documents, materials, or other information subject to subsection (b) of this Code section.

(d) In order to assist the Commissioner in the performance of his or her duties, the Commissioner may:

- (1) Share documents, materials, and other information, including confidential and privileged documents, materials, and information subject to subsection (b) of this Code section with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;
 - (2) Receive documents, materials, and other information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The Commissioner shall maintain as confidential and privileged any document, material, or information received with notice and the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
 - (3) Enter into agreements concerning sharing and use of information consistent with this subsection and subsections (b) and (c) of this Code section.
- (e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this Code section or as a result of sharing as authorized by subsection (d) of this Code section."

SECTION 5.

Section 4 of this Act shall become effective on January 1, 2010. All other sections of this Act shall become effective on July 1, 2008.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.